

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

ROBERT CLEMON SWAIN, JR.,	:	
	:	
Petitioner,	:	
	:	
vs.	:	5:05-CV-175 (CAR)
	:	
PAUL THOMPSON, Warden,	:	
	:	
Respondent.	:	

***ORDER ON THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE***

Before the Court is the United States Magistrate Judge's Recommendation [Doc. 11] that the above-captioned petition for federal habeas corpus relief be denied. Petitioner has entered his objections to the recommendation. Having considered the Recommendation and Petitioner's objections, this Court agrees with the conclusion of the United States Magistrate Judge that the petition is barred by the statute of limitations. Petitioner's conviction, by guilty plea, became final on December 28, 1995. He filed a motion to vacate his sentence as void on March 31, 2004, which was denied on August 9, 2004. Because Petitioner's conviction became final prior to the passage of the Anti-Terrorism and Effective Death Penalty Act of 1996, his limitations period expired on April 23, 1997. Wilcox v. Florida Dept. of Corrections, 158 F.3d 1209 (11th Cir. 1998). Although a properly filed motion to vacate a void sentence may toll the running of the limitations period (See Estes v. Chapman, 382 F.3d 1237 (11th Cir. 2004)), Petitioner's motion to vacate was filed nearly seven years after his limitations period had expired, too late to toll the running of the statute. The

Recommendation of the Magistrate Judge is therefore **ADOPTED** and **MADE THE ORDER OF THE COURT**; the instant petition for federal writ of habeas corpus is hereby **DENIED**.

SO ORDERED, this 28th day of April, 2006.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

chw